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Date: August 15, 2007 Name: Richard E. Stanley, Jr. Signature: /Richard E. Stanley, Jr./

Our Case No. 8627-431
Client Ref. No. PA-5498-RFB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
James B. Hunt)
Serial No.: 10/815,105) Examiner: Ryckman, Melissa K.
Filing Date: March 31, 2004) Group Art Unit No.: 3734
For: STENT-GRAFT WITH GRAFT TO)
GRAFT ATTACHMENT)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Office Action dated May 16, 2007, Applicant requests review of the final rejection in the above-identified application. As explained in more detail below, this review is being requested because of errors in the Examiner's rejections and the omission of elements needed for a *prima facie* rejection. A Notice of Appeal accompanies this Request.

In Applicant's after final reply filed July 25, 2007, Applicant requested that claims 28-35 be cancelled in order to remove issues for appeal. Claims 1-27 and 36 remain pending in the application. Claims 1 and 36 are independent claims. Applicant has directed his arguments before the Examiner to pending claims 1 and 36.

The Examiner has rejected claims 1 and 36 as being anticipated under 35 U.S.C. § 102(b) by Lentz et al. (U.S. Patent No. 5,843,166). The Examiner's rejections of dependant claims 2-27 are not at issue in this request for review. Applicant respectfully submits that the prior art of record does not disclose all of the limitations of Applicant's

claims. Moreover, there is no suggestion or motivation to combine the prior art to achieve Applicant's claimed inventions.

Referring to claim 1, the Examiner argues that Lentz et al. discloses a unitary stent structure (28). Specifically, the Examiner argues that "each ring structure (28) of Lentz is in fact a unitary stent structure." (Office Action at pg. 2). The Examiner also argues that Lentz et al. discloses first and second radial openings that are axially and circumferentially defined by a plurality of struts. In particular, the Examiner argues:

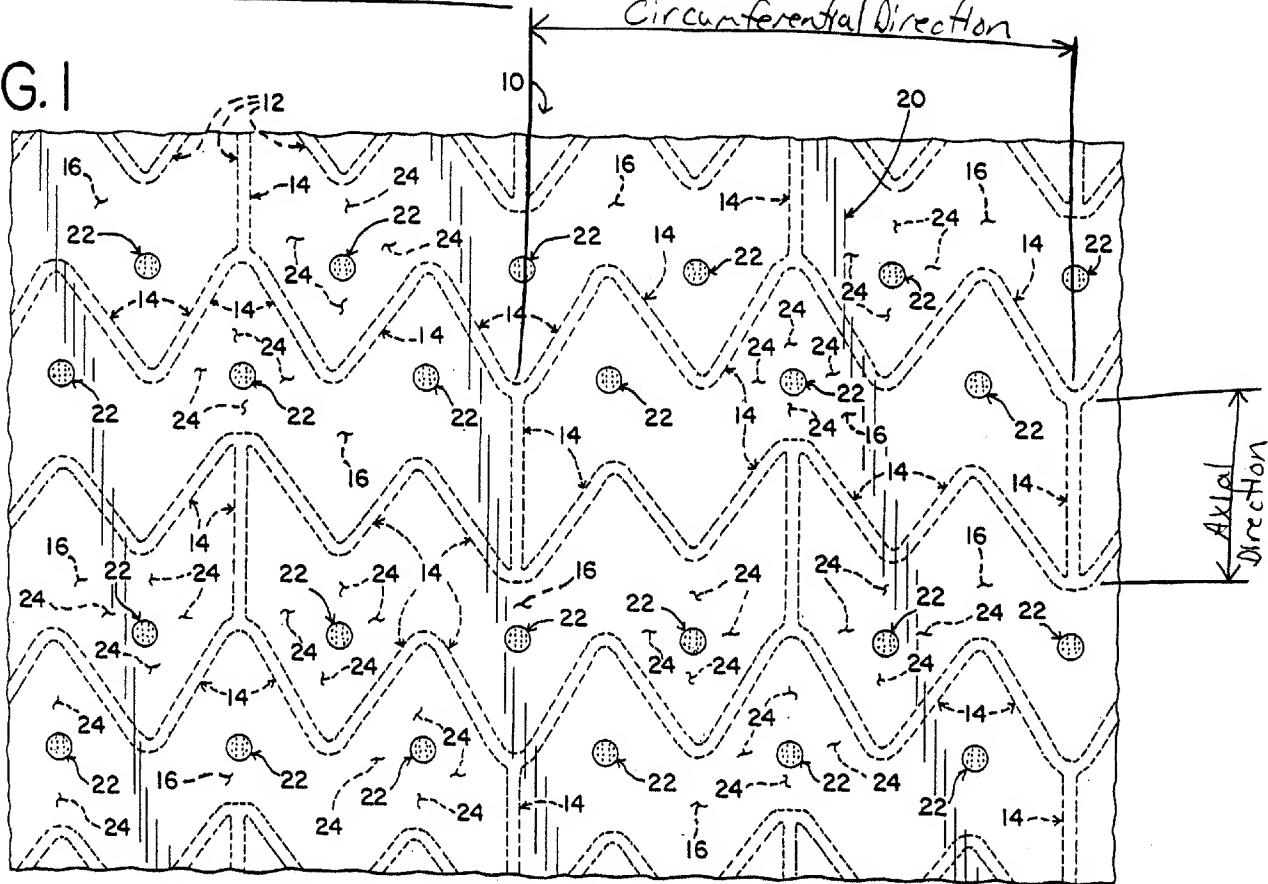
[E]xaminer interprets a radial opening as the space between stent members 28. It is clear based on figure 1 that the radial opening is defined radially by the struts of the stent members, however examiner asserts that the struts also define radially the opening. Otherwise, it should be said that the opening extends infinitely, since this is not the case (it is clear from applicants disclosure that the radial openings are confined to the device) examiner asserts that the outer circumference of the struts of two stent members defining a space there between defines the openings circumferentially. [(Office Action at pg. 3).]

Applicant respectfully disagrees with the Examiner's interpretation of Lentz et al. and the claim language recited in claim 1. Applicant is in agreement with the Examiner that "each" ring structure (28) in Lentz et al. may be considered to be a unitary stent structure. Thus, as shown in Figure 3 of Lentz et al., the disclosed stent-graft has three separate unitary stent structures. However, contrary to the Examiner's argument, none of the individual unitary stent structures in Lentz et al. has first and second radial openings extending therethrough. Claim 1 requires that the "unitary stent structure" have a first radial opening and a second radial opening. However, the Examiner admits that the only radial openings in Lentz et al. are "between" separate unitary stent structures (28). Thus, Lentz et al. fails to disclose radial openings extending through a unitary stent structure as required by claim 1.

Furthermore, the spaces between the ring stents (28) in Lentz et al. are not defined both axially and circumferentially as required by claim 1. An example of the claimed radial openings is shown in Figure 1 of Applicant's application. Reproduced below is a copy of Figure 1 with the axial and circumferential directions labeled.

Appendix A

FIG. 1



The Examiner's argument concerning this limitation is unclear because the Examiner refers to the openings in Lentz et al. as being "defined radially by the struts" but the Examiner does not explain how the radial openings are "axially" and "circumferentially" defined by struts. (Office Action at pg. 3). As shown above, the axial direction is along the length, or axis, of the stent. In Lentz et al., the space between the ring stents (28) is defined axially by adjacent ring stents (28). As explained above, this space fails to disclose Applicant's limitation that the openings are defined axially because the openings in Lentz et al. are not defined by the struts of a unitary stent structure as required by claim 1. In addition, as also shown above, the circumferential direction that is claimed is around the circumference of the stent. In Lentz et al., the space between the ring stents (28) is not defined or bound anywhere around the circumference of the stent. Indeed, the space in Lentz et al. wraps around the entire

circumference of the stent-graft between the ring stents (28). Thus, the space that the Examiner relies upon is undefined and boundless circumferentially. Moreover, the space is not defined circumferentially by the struts of a unitary stent structure as required by the claim. Because Lentz et al. fails to disclose all of the limitations of claim 1, it is respectfully submitted that the Examiner's § 102 rejection should be withdrawn and claim 1 should be allowed.

Turning to claim 36, the Examiner has not even argued that Lentz et al. discloses an unattached margin extending peripherally all around an attached area between inner and outer graft layers. An example of this embodiment is shown in Figure 1 of Applicant's application, which shows discrete attached areas 22 that are spaced away from all the edges of the radial openings, both forward and rearward in the axial direction and side-to-side in the circumferential direction. As a result, in Figure 1, the graft layers may move axially and circumferentially relative to the stent structure. (¶ [0020]). By contrast, Lentz et al. discloses attached areas that wrap all the way around the circumference of the stent-graft. (Col. 5, lines 41-46). Thus, Lentz et al. does not disclose discrete attached areas with unattached margins extending peripherally all around the attached areas. The Examiner has provided no explanation of how Lentz et al. discloses this limitation. Because Lentz et al. fails to disclose all of the limitations of claim 36, it is respectfully submitted that the Examiner's § 102 rejection should be withdrawn and claim 36 should be allowed.

It is respectfully submitted that none of the prior art of record discloses all of the limitations of Applicant's claims. Furthermore, there is no suggestion or motivation to combine the prior art to achieve Applicant's claimed inventions. Therefore, Applicant's claims are allowable. Accordingly, Applicant requests reconsideration and allowance of the application.

Respectfully submitted,

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